



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 20, 1998

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR98-1700

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116699.

The Harris County District Attorney's Office (the "district attorney") received a request for information relating to *State of Texas v. Joe Lopez*, Cause No. 768148. You state that the district attorney has no objection to releasing documents that are on file with the Harris County District Clerk. You contend that the remaining documents, labeled appendices A and B, are excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.108 of the Government Code provides in part:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [public disclosure] if . . . (3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

You contend that the documents in appendix A are "work product of the prosecutors" and are excepted from disclosure under section 552.108(a)(3). We agree that the district attorney may withhold most of the information in appendix A under section 552.108(a)(3). We have,

however, marked portions of three documents that are not protected by section 552.108(a)(3). The marked portions do not appear to have been prepared by an attorney, and you have not demonstrated that these portions reflect an attorney's mental impressions or legal reasoning. Therefore, the district attorney must release the marked portions of these three documents in appendix A.¹

You claim that the documents in appendix B are confidential by law. Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Federal regulations prohibit the release of criminal history report information ("CHRI") maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, to the extent that appendix B contains CHRI obtained from DPS or another criminal justice agency, you must not release such information to the requestor.

You assert that one of the documents in appendix B, the district attorney's report to the Texas Department of Criminal Justice (the "district attorney's report"), is confidential pursuant to section 508.313 of the Government Code. Section 508.313 provides in part:

(a) All information obtained or maintained, including a victim protest letter or other correspondence, a victim impact statement, a list of inmates eligible for release on parole, and an arrest record of an inmate, is confidential and privileged if the information relates to:

(1) an inmate of the institutional division subject to release on parole, release to mandatory supervision, or executive clemency;

(2) a release; or

¹We note that several documents in appendix A identify a victim of sexual assault. The district attorney must withhold the victim's identity from disclosure pursuant to the common-law right to privacy, unless this information is otherwise contained in public court records. *See Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (information contained in public court records not protected by common-law privacy). *See also Star Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474-475 (Tex. 1995).

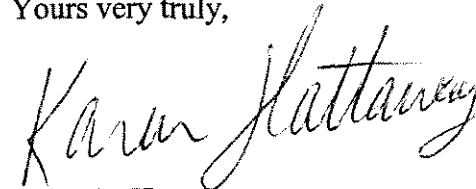
(3) a person directly identified in any proposed plan of release for an inmate.

This provision accords confidentiality to the records of the Texas Department of Criminal Justice. *See* Open Records Decision Nos. 190 (1978) at 2 (predecessor statute makes confidential files of the Board of Pardons and Paroles), 33 (1974). Section 508.313 does not make records in the custody of the district attorney confidential. Furthermore, we note that much of the information contained in the district attorney's report is "basic information" which must be released in accordance with section 552.108(c) of the Government Code and *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Finally, we note that the district attorney's report contains CHRI. Where an individual's CHRI has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that federal regulations which limit access to criminal history record information that states obtain from the federal government or other states recognize privacy interest in such information). Similarly, open records decisions issued by this office acknowledge this privacy interest. *See* Open Records Decision Nos. 616 (1993), 565 (1990). We have marked the information in the district attorney's report that must be withheld. The remaining portions of the report must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 116699

Enclosures: Submitted documents

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(w/o enclosures)